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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

USCG-2004-19416-11

CGD01-04-094

RIN 1625-AA-87

Security Zones; Department of Homeland Security (DHS)

Secretary Ridge Visit, Boston, Massachusetts.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary security zones in Boston Harbor in a 25 yard radius of pier 1 at the Charlestown Navy Yard, and 50 yards surrounding Very Important Person (VIP) vessels designated by the Captain of the Port (COTP) Boston, Massachusetts, to be in need of Coast Guard escort for security reasons in the COTP Boston, Massachusetts zone. These temporary zones are needed to safeguard Secretary Ridge, the public, designated VIP vessels and crews, and the infrastructure within the COTP Boston, Massachusetts zone from terrorist or subversive acts during Secretary Ridge's visit. These temporary security zones will prohibit entry into, upon, or under, or movement within the waters of Boston Harbor, Boston, Massachusetts without express permission of the Boston

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Captain of the Port, (COTP), or Coast Guard assets on scene designated by the Captain of the Port.

DATES: This rule is effective during the specified closure periods from 8:30 a.m. EDT on July 14, 2004 through 4:15 p.m. EDT on July 14, 2004.

ADDRESSES: Documents as indicated in this preamble as being available in the docket are part of docket CGD01-04-094 and will be available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Daniel Dugery, Marine Safety Office Boston, Waterway Safety and Response Division, at (617) 223-3000.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Due to the sensitive and unpredictable nature of Secretary Ridge's schedule, logistics were not finalized until July 13, 2004,

thus making it impossible to draft or publish a NPRM or a final rule 30 days in advance of its effective date. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to protect Secretary Ridge from potential sabotage or other subversive acts, accidents, or other hazards of a similar nature. These zones affect a small area of water for only a brief duration and should have minimal impact on navigation within Boston Harbor.

Background and Purpose

Secretary of the Department for Homeland Security (DHS), ("Secretary Ridge") will be visiting Charlestown, Massachusetts on July 14, 2004. The Coast Guard is establishing the following areas as temporary security zones during Secretary Ridge's visit: all waters of Boston Harbor within a 25 yard radius of pier 1 at the Charlestown Navy Yard and 50 yards surrounding Very Important Person (VIP) vessels designated by the Captain of the Port (COTP) Boston, Massachusetts, to be in need of Coast Guard support for security reasons in the COTP Boston, Massachusetts zone. These temporary security zones are necessary to protect Secretary Ridge, other public officials in attendance, members of the public and the surrounding area from potential sabotage or other subversive acts, accidents, or other hazards of a

similar nature.

The Captain of the Port Boston, Massachusetts will notify the maritime community of the periods during which the security zones will be enforced. Broadcast notifications will be made to the maritime community advising them of the boundaries of the zones.

For purposes of this rulemaking, designated VIP vessels include any vessels designated by the Coast Guard Captain of the Port, Boston, Massachusetts to be in need of Coast Guard escorts in the Boston, Massachusetts COTP zone. Any VIP designated vessel zones may contain protectees. "Protectees" may include Secretary Ridge. A designated representative aboard a Coast Guard Cutter or patrol boat will accompany designated VIP vessels deemed in need of escort protection.

The Captain of the Port, Boston, Massachusetts will notify the maritime community of the periods during which the security zones will be enforced. Broadcast notifications will be made to the maritime community advising them of the boundaries of the zones and a designated representative aboard a Coast Guard cutter or patrol boat will accompany designated VIP vessels deemed in need of escort.

No person or vessel may enter or remain in the prescribed security zones at any time without the permission of the Captain of the Port, Boston, Massachusetts. Each person or vessel in a security zone shall obey any direction or order of the Captain of the Port or the designated Coast Guard on-scene representative. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port. Any violation of any security zone described herein, is punishable by, among others, civil penalties (not to exceed \$32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 6 years and a fine of not more than \$250,000 for an individual and \$500,000 for an organization), *in rem* liability against the offending vessel, and license sanctions. This regulation is established under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to

allow the Coast Guard to take actions, including the establishment of security zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. Moreover, the Coast Guard has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 et seq.) (the "Magnuson Act"), and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations.

Discussion of Rule

This proposed rule establishes temporary security zones. These security zones will encompass all waters within a 25 yard radius of pier 1 at the Charlestown Navy Yard and 50 yards around Very Important Person (VIP) vessels designated by the Captain of the Port (COTP) Boston, Massachusetts, to be in need of Coast Guard support for security reasons in the COTP Boston, Massachusetts zone. These temporary security zones are necessary to protect Secretary Ridge, members of the public, and the surrounding area from sabotage or other subversive acts, accidents, or other hazards of a similar nature.

The Captain of the Port, Boston, Massachusetts will notify the maritime community of the period during which the

security zone will be enforced. These zones will be enforced on an as needed basis for short periods of time when Secretary Ridge is present in the area (Charlestown Pier 1) or on a vessel. Broadcast notifications will be made to the maritime community advising them of the boundaries of the zone.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be minimal enough that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of the DHS is unnecessary. Although this temporary rule will prevent some traffic from moving within a portion of Boston Harbor during the effective period of this regulation, it will not be significant for several reasons: the impact on navigation will be for a minimal amount of time, and delays, if any, will be minimal as vessels will have adequate room to move around the zones. Moreover, broadcast notifications will be made via VHF

radio to the maritime community advising them of the boundaries of the zones and Coast Guard and other law enforcement assets will be on-scene to direct vessels away from the zones.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the zone. However, this rule will not have a significant economic impact on a substantial number of small entities due to the minimal time that vessels will be restricted from the area of the zones; vessels will have to wait only a short time; and advance notifications will be made

to the local maritime community by marine information broadcasts.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule would affect your small business, organization or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CPO Dan Dugery at Marine Safety Office Boston, (617) 223-3000.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This rule calls for no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking Of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related

management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g) of the Instruction, from further environmental documentation since implementation of this action will not result in any:

- (1) Significant cumulative impacts on the human environment;
- (2) Substantial controversy or substantial change to existing environmental conditions;
- (3) Impacts on properties protected under the National Historic Preservation Act or
- (4) Inconsistencies with any Federal, State or local laws or administrative determinations relating to the environment.

A final "Environmental Analysis Checklist" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping Requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165-REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5; Department of Homeland Security Delegation No. 0170.

2. Add §165.T04-094 to read as follows:

§165.T04-094 Security Zones; Department of Homeland Security (DHS) Secretary Ridge Visit, Boston, Massachusetts.

(a) Location. The following areas are security zones:

(1) All waters within a 25-**yard** radius of pier 1 located at the Charlestown Navy Yard, Charlestown, Massachusetts. (2) All navigable waters 50 yards around any designated Very Important Person vessel carrying Secretary Ridge in the Captain of the Port Boston, Massachusetts zone.

(b) Regulations. (1) In accordance with the general regulations in §165.33 of this part, entry into or movement

within these zones is prohibited unless previously authorized by the Coast Guard Captain of the Port (COTP), Boston, Massachusetts or his designated representative. (2) All persons and vessels must comply with the instructions of the COTP or the designated on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state and federal law enforcement vessels. (3) The COTP or his designated representative will notify the maritime community of periods during which these zones will be enforced. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the COTP or his designated representatives.

(c) Authority. In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

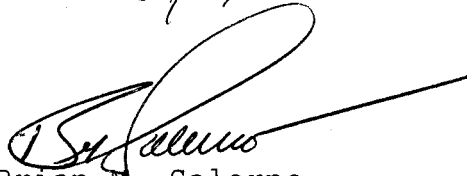
(d) Effective Period. This section is effective from:

(1) 11:45 a.m. EDT on 14 July 2004 to 2:30 p.m. EDT on 14 July 2004 with respect to the Charlestown Navy Yard zone at Pier 1 in Charlestown, Massachusetts.

(2) Between 8:30 a.m. EDT on July 14, 2004 to 4:15 p.m. EDT on July 14, 2004 with respect to the security zone surrounding designated VIP vessels carrying protectees as deemed necessary by the Captain of the Port.

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(d) Enforcement. The COTP will enforce this zone and may enlist the aid and cooperation of any Federal, state, county, municipal, or private agency to assist in the enforcement of the regulation.

Dated: July 14, 2004



Brian M. Salerno

Captain, U. S. Coast Guard

Captain of the Port

Boston, Massachusetts